IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1425 of 1999

In

SPECIAL CIVIL APPLICATION No. 6546 of 1999

with

CIVIL APPLICATION NO. 12403 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BARKATBHAI V NARSINDANI &2 - Petitioner(s)

Versus

PATEL FILTERS LTD - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner No(s).: 1,2.

MR KD GANDHI for NANAVATI ASSOCIATES for Respondent No(s).: 1.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Present is an appeal under Clause-15 of the Letters Patent against the decision dated 1.10.1999, passed in Special Civil Application No. 6546 of 1999.

2.Short facts necessary for disposal of the present matter are that somewhere in the year 1996, a chargesheet was issued to the present appellant, Inquiry Officer was appointed, so also the Presenting Officer was appointed by the Company. The present appellant made an application to the establishment that as the Presenting Officer is a Law graduate, undisputely not an advocate, the petitioner be also provided facility of an advocate for his proper representation. The application was turned down, inquiry proceeded and finally, the verdict was given against the workman and he was terminated. A Reference was made to the Labour Court. The Labour Court gave appropriate opportunity to the parties to prove that whether domestic inquiry was valid or was vitiated. After hearing the parties, the Labour Court observed that the inquiry was vitiated because of wrong rejection or unjust rejection of the workman's application for being represented by a legal practitioner. The said order dated 17th April, 1999 being not palatable to the establishment, the establilshment came to this Court in Special Civil Application No. 6546 of 1999. After hearing the learned counsel for the parties, the learnd Single Judge held that a person who is simply holding a degree in Law cannot be equated with a practising advocate or a legally trained mind. The learned Single Judge, after giving his due consideration to the totality of the circumstances observed that the learned Labour Court was absolutely unjustified in holding that the inquiry was vitiated because of non-grant of permission in favour of the workman.

3.Being aggrieved by the said judgment, the workman is before this Court.

4.Learned counsel for the appellant submits that from the facts of the case, so also from the judgment of the Supreme Court, it would clearly appear that if the establishment wants to have a walk over against the employee by taking advantage and assistance of the legally trained mind and permission of representation by an advocate is refused, then, such action of the management would vitiate the domestic inquiry. She has placed reliance on the judgment of the Supreme Court in the matters of **Board of Trustees of Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni, reported in AIR 1983 SC 109, D.P. Maheshwari**

Vs. Delhi Admn. &ors., reported in 1983 Labour &Industrial Cases, 1629, National Council for Cement and Building Materials, reported in (1996) 3 SCC 206 and Cooper Engineering Ltd. Vs. P.P. Mundhe, reported in AIR 1975 SC 1900to submit that a walk over cannot be given to the establishment and in any case, at an interim stage, the High Court should not interfere in the matter.

5. On the matter of Board of Trustees of the Port of Bombay (supra), strong reliance was placed to contend that if in an inquiry before a domestic tribunal, delinquent is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself. In the present matter, it is not in dispute that the Presenting Officer though possessed degree of Law, but was neither a Law Officer nor was a legally trained mind, but was holding office of the Personnel Officer. In the matter of the Board of Trustees (supra), the Supreme Court proceeded to consider the issue in light of the facts that the Chairman of the establishment awarded work to two legally trained minds, namely, Inquiry Officer and the Presenting Officer. In the present matter, no evidence was brought before the learned Labour Court to prove the fact that the Presenting Officer was a legally trained mind. In the absence of such allegation, a simple degree in law in favour of someone would not make him a legally trained mind. We would not be unjustified in taking note of the common practice prevailing these days that when somebody does not get a job, he goes for a degree in Law and even when the people are in service, they simply go for a degree in Law though the same may or may not be good for them. The words " legally trained mind" do not mean possessing a degree simplicitor. Legally trained mind would be somebody who has some legal experience or has some experience relating to domestic inquiries on their legal side.

6. In the matter of National Council for Cement, the Supreme Court was of the view that at an interim stage, the High Court should not interfere in the matter, so are the views of the Supreme Court in other two matters. After giving our sincere consideration to the said judgments, we are of the opinion that the said judgments do not apply to the facts of the present case. There, the Supreme Court observed that the establishment cannot be allowed to compel the Labour Court to to cast a preliminary issue, seek a decision on the same and thereafter challenge the same before the higher tribunal or the High Court. In the present matter, the issue relating to validity of the inquiry was not a preliminary issue touching the merits of the charges or whether provisions of the Industrial Disputes Act were applicable to the

parties. Unless the issue relating to the validity of inquiry is decided by a competent Labour Court, the parties would not be entitled to proceed further. In a given case, if the Labour Court holds that the inquiry was valid, then, it may refuse to interfere in the matter. In a given case, if the Labour Court comes to a conclusion that the inquiry stands vitiated because of non-observance of the principles of natural justice or so, then, it would be obliged to give proper opportunity to the establishment to lead further evidence in support of their allegations/charges. Once the issue relating to validity of the inquiry is decided, then only, the Labour Court would proceed or not proceed further in the matter. The decision on such issue is not equal to a decision on a preliminary issue. In fact, the decision on that issue is a decision in relation to the jurisdiction of the Labour Court that whether it proposes to interfere in the matter. The judgments on which strong reliance has been placed, are altogether different and in fact, do not decide this point.

7. The learned Single Judge has categorically observed that in the present case, the Presenting Officer was an officer (Personnel), who was simply possessing a degree in Law. In our opinion, the learned Single Judge was absolutely justified in observing that merely by possessing a degree in Law, one does not become a legal practitioner nor can he be said to have achieved legal attainment. The learned Single Judge was also justified in observing that no person can be said to be a legally trained mind or a person of legal attainment merely by acquiring a degree in Law.

8. In absence of any positive material that the Presenting Officer who was occupying office of Personnel Officer was a trained person, specially in the field of Law, the Learned Labour Court could not observe that the inquiry was vitiated. The appelant has failed to prove that the domestic inquiry stood vitiated by non-grant of the permission to be represented by an advocate.

9. We find no reason to interfere. The apppal is dismissed. Consequently, Civil Application stands rejected. Interim relief stands vacated.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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